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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

CAROLINA BERNAL STRIFLING and  
 WILLOW WREN TURKAL, on behalf of  
 themselves and all others similarly situated,

Plaintiffs,

v.

TWITTER, INC.,

Defendant.

Case No. 4:22-cv-07739-JST

**DEFENDANT TWITTER, INC.'S  
 OBJECTION AND REQUEST TO  
 STRIKE PLAINTIFFS' SUR-REPLY  
 TO MOTION TO DISMISS**

Date: April 6, 2023  
 Time: 2:00 p.m.  
 Judge: Hon. Jon. S. Tigar

**OBJECTION TO AND REQUEST TO STRIKE PLAINTIFFS' SUR-REPLY TO**  
**MOTION TO DISMISS**

Plaintiffs unilaterally filed a Sur-Reply in opposition to Twitter's Motion to Dismiss ("Sur-Reply"). See Dkt. No. 30 (styling the document a "Notice"). Plaintiffs' Sur-Reply is improper because they did not receive, or even request, leave of Court to file it. See, e.g., *Alaska Wildlife Alliance v. Jensen*, 108 F.3d 1065, n. 5 (9th Cir. 1997) (noting the proper procedure to address issues related to reply brief is to move to file a sur-reply); *Lowenberg v. Illinois Mut. Life Ins. Co.*, No. 21-CV-09739-HSG, 2022 WL 3925298, at \*1, n. 1 (N.D. Cal. Aug. 30, 2022) (sustaining defendant's objection to plaintiff's "procedurally improper sur-reply without the Court's permission" and ordering the clerk to strike the sur-reply); *Harold v. Wells Fargo Bank, N.A.*, No. 19-CV-08020-JST, 2020 WL 3867203, at \*1, n. 2 (N.D. Cal. May 29, 2020) (noting the Court would not consider the plaintiffs' two sur-replies filed "without leave of court" and citing to Civil L.R. 7-3(d), which provides that "[o]nce a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval"); *Moss v. Infinity Ins. Co.*, No. 15-CV-03456-JSC, 2016 WL 7178559, at \*1, n. 1 (N.D. Cal. Dec. 9, 2016) ("Plaintiff's sur-reply was procedurally improper: Plaintiff has no right to file a sur-reply under the Local Rules or the Federal Rules of Civil Procedure, or the Court's Standing Order and Plaintiff did not obtain leave of court to file a sur-reply.").

In addition, Plaintiffs' Sur-Reply is not one of the permitted exceptions to the prohibition on filing supplemental material after a reply has been filed. See N.D. Cal. Civ. L.R. 7-3(d). Specifically, the Local Rules permit only two exceptions: (1) an objection to evidence submitted on reply; and (2) a notice that brings to the Court's attention "a relevant judicial opinion published after the date the opposition or reply was filed." See N.D. Cal. Civ. L.R. 7-3(d)(1)-(2). Plaintiffs' Sur-Reply satisfies neither exception. First, the Sur-Reply does not assert an objection. Twitter did not submit any evidence in connection with its Reply. See Dkt. No. 28. As a result, there is nothing to "object" to. Second, Plaintiffs' Sur-Reply does not identify or reference a judicial opinion that was issued after the date of the opposition (January 20, 2023) or the reply (February 7, 2023). See Sur-Reply. Accordingly, the Sur-Reply is not a proper supplemental filing.

1 Plaintiffs may contend that they simply wanted to submit the Notices of Right to Sue that  
 2 they received from the EEOC and California Civil Rights Division. But the agencies issued these  
 3 notices on February 22, 2023, ECF 30, and Plaintiffs did not file them until March 3, 2023—two  
 4 days after Twitter filed its Reply. In any event, Plaintiffs did not only file these notices (which,  
 5 for the reasons explained *supra*, would nonetheless be inappropriate). Instead, they used the  
 6 occasion to submit an impermissible Sur-Reply that includes substantive arguments and case  
 7 citations. *See* ECF 30. Their attempt to “sandbag” Twitter should not be rewarded. Twitter  
 8 respectfully requests the Court sustain Twitter’s objection and strike Plaintiffs’ Sur-Reply in its  
 9 entirety.

10 Dated: March 3, 2023

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